

SENATE BILL No. 548

DIGEST OF INTRODUCED BILL

Citations Affected: IC 12-7-2; IC 12-9-5-5; IC 12-11.5; IC 12-24; IC 16-18-2; IC 16-28-13; IC 16-32-4.

Synopsis: Direct care staff registry and criminal history. Requires the state department of health to establish and maintain a registry of case managers and certain unlicensed employees of: (1) community based residential, habilitation, or vocational services providers; (2) home care services providers; (3) intermediate care facilities for the mentally retarded serving more than eight individuals; (4) state institutions under the control of the division of disability, aging, and rehabilitative services (DDARS) or the division of mental health; and (5) health care facilities. Prohibits specified entities from certifying or employing an individual as a case manager or employing an individual in certain unlicensed positions if the individual has been convicted of specified offenses or if the individual has committed a certain action. Provides for the establishment of procedures to investigate allegations of specified types of misconduct and to report substantiated findings. Allows DDARS to assess a civil penalty for noncompliance.

Effective: Upon passage; July 1, 2001.

Riegsecker, Miller

January 23, 2001, read first time and referred to Committee on Corrections, Criminal and Civil Procedures.

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First Regular Session 112th General Assembly (2001)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2000 General Assembly.

SENATE BILL No. 548

A BILL FOR AN ACT to amend the Indiana Code concerning human services.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 12-7-2-25.5 IS ADDED TO THE INDIANA CODE
2 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 2001]: **Sec. 25.5. "Case manager", for purposes of IC 12-9-5 and**
4 **IC 12-11.5, means an individual who provides ongoing case**
5 **management to an individual:**

6 **(1) with developmental disabilities; or**

7 **(2) who is at least sixty-five (65) years of age;**

8 **who receives services under a Medicaid home and community**
9 **based waiver approved under 42 U.S.C. 1396n or the community**
10 **and home options to institutional care for the elderly and disabled**
11 **program under IC 12-10-10.**

12 SECTION 2. IC 12-7-2-37.5 IS ADDED TO THE INDIANA CODE
13 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
14 1, 2001]: **Sec. 37.5. "Community based residential, habilitation, or**
15 **vocational services provider", for purposes of IC 12-9-5 and**
16 **IC 12-11.5, means an entity approved by the bureau of**
17 **developmental disabilities services under IC 12-11-1.1-1(e).**



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SECTION 3. IC 12-7-2-63.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: **Sec. 63.5. (a) "Direct care staff person", for purposes of IC 12-9-5, IC 12-11.5, and IC 12-24-3.5, means an individual who provides direct assistance with daily living and personal adjustment activities to a consumer receiving services from any of the following entities:**

(1) A community based residential, habilitation, or vocational services provider (as defined in section 37.5 of this chapter).

(2) A home care services provider (as defined in section 105.3 of this chapter).

(3) An ICF/MR (as defined in IC 16-18-2-185) serving more than eight (8) individuals.

(4) A state institution (as defined in section 184 of this chapter).

(b) The term does not include the following:

(1) A person who holds a license (as defined in IC 25-1-9-3) issued by a board (as defined in IC 25-1-9-1).

(2) A nurse aide (as defined in IC 16-28-13-1) who is employed by an entity described in subsection (a)(2).

(3) A volunteer who provides direct care services without compensation.

(4) A member of the consumer's immediate family.

SECTION 4. IC 12-7-2-105.3 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: **Sec. 105.3. "Home care services provider", for purposes of IC 12-9-5 and IC 12-11.5, means an individual or entity who provides any of the following services to an individual who is at least sixty-five (65) years of age who receives services under a Medicaid home and community based waiver approved under 42 U.S.C. 1396n or the community and home options to institutional care for the elderly program under IC 12-10-10:**

(1) Homemaker services and attendant care, including personal care services.

(2) Respite care services.

SECTION 5. IC 12-7-2-135.6 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: **Sec. 135.6. (a) "Other unlicensed employee", for purposes of IC 12-11.5 and IC 12-24-3.5, means an employee of any of the following entities:**

(1) A community based residential, habilitation, or vocational

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services provider (as defined in section 37.5 of this chapter).

(2) A home care services provider (as defined in section 105.3 of this chapter).

(3) A state institution (as defined in section 184 of this chapter).

(b) The term does not include the following:

(1) A direct care staff person (as defined in section 63.5 of this chapter).

(2) A person who holds a license (as defined in IC 25-1-9-3) issued by a board (as defined in IC 25-1-9-1).

SECTION 6. IC 12-7-2-159.3 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 159.3. "Registry of direct care staff", for purposes of IC 12-9-5, IC 12-11.5, and IC 12-24-3.5, refers to the registry of direct care staff persons and case managers maintained by the state department of health under IC 16-32-4.

SECTION 7. IC 12-7-2-159.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 159.5. "Registry of nurse aides", for purposes of IC 12-11.5 and IC 12-24-3.5, refers to the registry of nurse aides maintained by the state department of health under 42 CFR 483.156.

SECTION 8. IC 12-9-5-5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 5. (a) This section applies to the following individuals:

(1) A direct care staff person, except for an individual who is a regular employee (as defined in IC 4-15-2-3.7) of a state institution.

(2) A case manager.

(b) Not later than September 1, 2001, the division shall establish a procedure for the receipt and the timely review and investigation of allegations of:

- (1) neglect of a consumer;
- (2) abuse of a consumer;
- (3) mistreatment of a consumer; or
- (4) misappropriation of a consumer's property;

by an individual described in subsection (a).

(c) The procedure required under subsection (b) must allow for:

- (1) reasonable notice to the direct care staff person or case manager;
- (2) reasonable opportunity for a hearing before an administrative law judge in which the direct care staff person

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or case manager may rebut the allegation; and

(3) judicial review of a final order issued by an administrative law judge.

(d) The division shall, after following the procedure required under this section, make a finding whether the direct care staff person or case manager:

(1) neglected a consumer;

(2) abused a consumer;

(3) mistreated a consumer; or

(4) misappropriated a consumer's property.

(e) If the division determines that a direct care staff person or case manager has:

(1) neglected a consumer;

(2) abused a consumer;

(3) mistreated a consumer; or

(4) misappropriated a consumer's property;

the division shall notify the registry of direct care staff and the individual's current employer, if known to the division, of that determination.

(f) The division may adopt rules under IC 4-22-2, including emergency rules under IC 4-22-2-37.1, to implement this section.

SECTION 9. IC 12-11.5 IS ADDED TO THE INDIANA CODE AS A NEW ARTICLE TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]:

ARTICLE 11.5. EMPLOYMENT OF CASE MANAGERS, DIRECT CARE STAFF PERSONS, AND OTHER UNLICENSED EMPLOYEES

Chapter 1. Applicability

Sec. 1. This article applies after August 31, 2001.

Sec. 2. This article applies to the following entities:

(1) A community based residential, habilitation, or vocational services provider.

(2) A home care services provider.

(3) An entity that employs individuals as case managers.

(4) An entity responsible for certifying individuals as case managers.

(5) An entity in the business of contracting to provide:

(A) direct care staff persons or other unlicensed employees for an entity described in subdivision (1) or (2); or

(B) case managers for an entity described in subdivision (3).

Chapter 2. Prohibition Against Certifying or Employing Certain

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Individuals

Sec. 1. An entity described in IC 12-11.5-1-2 may not knowingly certify an individual as a case manager or employ an individual as a case manager, direct care staff person, or other unlicensed employee if the individual has been convicted of any of the following:

- (1) A sex crime (IC 35-42-4).
- (2) Exploitation of an endangered adult (IC 35-46-1-12).
- (3) Failure to report battery, neglect, or exploitation of an endangered adult (IC 35-46-1-13).
- (4) Theft (IC 35-43-4) within the previous ten (10) years.
- (5) Murder (IC 35-42-1-1).
- (6) Voluntary manslaughter (IC 35-42-1-3).
- (7) Involuntary manslaughter (IC 35-42-1-4) within the previous five (5) years.
- (8) Felony battery (IC 35-42-2) within the previous five (5) years.
- (9) A felony offense relating to controlled substances (IC 35-48-4) within the previous five (5) years.

Sec. 2. In addition to the requirement of section 1 of this chapter, an entity described in IC 12-11.5-1-2 may not knowingly certify an individual as a case manager or employ an individual as a case manager or direct care staff person if one (1) or more of the following conditions exist:

- (1) A finding that the individual has:
 - (A) abused, neglected, or mistreated a consumer; or
 - (B) misappropriated a consumer's property;
 has been entered into the registry of direct care staff.
- (2) A finding that the individual has:
 - (A) abused, neglected, or mistreated a patient; or
 - (B) misappropriated a patient's property;
 has been entered into the registry of nurse aides.

Chapter 3. Obtaining Limited Criminal History and Registry Reports

Sec. 1. Except as provided in section 3 of this chapter, a person who operates an entity described in IC 12-11.5-1-2 shall, before certifying an individual as a case manager or hiring an individual as a case manager or direct care staff person, obtain from the state department of health a copy of the individual's:

- (1) registry of direct care staff report; and
- (2) registry of nurse aides report.

Sec. 2. Except as provided section 3 of this chapter, a person



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who operates an entity described in IC 12-11.5-1-2 shall, within three (3) business days after:

- (1) certifying an individual as a case manager; or
- (2) hiring an individual as a case manager, direct care staff person, or other unlicensed employee;

apply to the Indiana central repository for criminal history information under IC 5-2-5 or another source allowed by law for a copy of the individual's limited criminal history.

Sec. 3. If an entity described in IC 12-11.5-1-2(5) places an individual as a case manager, direct care staff person, or other unlicensed employee in an entity described in IC 12-11.5-1-2(1) through IC 12-11.5-1-2(4), the entity described in IC 12-11.5-1-2(1) through IC 12-11.5-1-2(4) is not required to apply for the documents required by section 1 or 2 of this chapter regarding the individual.

Sec. 4. Except as provided in section 5 of this chapter, if the registry of direct care staff does not contain any information regarding an individual who has:

- (1) applied to an entity described in IC 12-11.5-1-2(4) for certification as a case manager; or
- (2) applied for employment as a direct care staff person with an entity described in IC 12-11.5-1-2;

the entity shall transmit the information required under IC 16-32-4-6 to the registry of direct care staff within three (3) business days after receipt of notice that there is no information regarding the individual in the registry of direct care staff.

Sec. 5. If an entity described in IC 12-11.5-1-2(5) places an individual as a direct care staff person in an entity described in IC 12-11.5-1-2(1) through IC 12-11.5-1-2(4), the entity described in IC 12-11.5-1-2(1) through IC 12-11.5-1-2(4) is not required to transmit the information required by section 4 of this chapter.

Sec. 6. A person who operates an entity described in IC 12-11.5-1-2 may not certify an individual as a case manager or employ an individual as a case manager or direct care staff person after receipt of the individual's:

- (1) limited criminal history if the limited criminal history indicates that the individual has been convicted of an offense listed in IC 12-11.5-2-1;
- (2) registry of direct care staff report if the report indicates that the individual has been found to have committed an action listed in IC 12-11.5-2-2(1); or
- (3) registry of nurse aides report if the report indicates that

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the individual has been found to have committed an action listed in IC 12-11.5-2-2(2).

Sec. 7. A person who operates an entity described in IC 12-11.5-1-2 may not employ an individual as an other unlicensed employee after receipt of the individual's limited criminal history if the limited criminal history indicates that the individual has been convicted of an offense listed in IC 12-11.5-2-1.

Sec. 8. A person who operates an entity described in IC 12-11.5-1-2 is responsible for the payment of fees under IC 5-2-5-7 and other fees required to process a limited criminal history, registry of direct care staff report, and registry of nurse aides report under this chapter.

Sec. 9. An entity described in IC 12-11.5-1-2 may require an individual who applies to the entity for certification or employment:

- (1) to pay the cost of fees described in section 8 of this chapter to the entity at the time the individual applies for certification or employment; or
- (2) to reimburse the entity for the cost of fees described in section 8 of this chapter.

Chapter 4. Limit on Application of Article

Sec. 1. The application of this article to an entity described in IC 12-11.5-1-2 is limited to an individual:

- (1) who is certified or employed by the entity; and
- (2) whose employment or responsibilities are limited to activities primarily performed:
 - (A) within an entity described in IC 12-11.5-1-2(1) or IC 12-11.5-1-2(2); or
 - (B) by a case manager.

Chapter 5. Rights Upon Denial, Revocation, or Dismissal

Sec. 1. This chapter applies to an individual who:

- (1) is denied:
 - (A) certification; or
 - (B) employment;
- (2) has the individual's certification revoked; or
- (3) is dismissed from employment;

under this article.

Sec. 2. An individual described in section 1 of this chapter:

- (1) does not have a cause of action;
 - (2) is not eligible for unemployment compensation;
 - (3) does not acquire the rights of an unemployed individual;
- and

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(4) does not have other rights under IC 22;
as a result of the denial, revocation, or dismissal.

Chapter 6. Penalties

Sec. 1. The division may assess a civil penalty against a person who:

- (1) operates an entity described in IC 12-11.5-1-2; and
- (2) knowingly or intentionally violates IC 12-11.5-2-1 through IC 12-11.5-2-7.

Sec. 2. The amount of the penalty assessed under section 1 of this chapter may not exceed the amount of the fine that may be assessed against a health facility by the state department of health under IC 16-28-5-4(a)(2) for a deficiency.

Sec. 3. Civil penalties collected under this chapter shall be:

- (1) deposited by the division in the developmentally disabled client services account; and
- (2) used to implement this chapter and other quality assurance programs approved by the division.

Chapter 7. Record Keeping

Sec. 1. Each entity described in IC 12-11.5-1-2 shall maintain a personnel record for each case manager, direct care staff person, and other unlicensed employee certified or employed by the entity. The personnel record must include the documents required under:

- (1) IC 12-11.5-3-1 and IC 12-11.5-3-2 for each case manager or direct care staff person; or
- (2) IC 12-11.5-3-2 for an other unlicensed employee.

Sec. 2. The personnel records required under section 1 of this chapter shall be available for inspection by the division to assure compliance with this article.

Sec. 3. If an entity described in IC 12-11.5-1-2(5) provides a direct care staff person or other unlicensed employee to an entity described in IC 12-11.5-1-2(1) through IC 12-11.5-1-2(4), the entity described in IC 12-11.5-1-2(5) shall provide a copy of the documents required under section 1 of this chapter to the entity described in IC 12-11.5-1-2(1) through IC 12-11.5-1-2(4). If an entity described in IC 12-11.5-1-2(5) fails to provide a document described in section 1 of this chapter to an entity described in IC 12-11.5-1-2(1) through IC 12-11.5-1-2(4), the entity described in IC 12-11.5-1-2(1) through IC 12-11.5-1-2(4) is not in violation of this chapter.

Chapter 8. Reporting of Unfitness

Sec. 1. If an entity described in IC 12-11.5-1-2 has knowledge of a conviction of an employee of the entity that would indicate

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unfitness for service as a direct care staff person, other unlicensed employee, or other health care professional (as defined in IC 16-27-2-1), the entity shall report the information to:

- (1) the division;
- (2) the registry of direct care staff if the employee is a case manager or direct care staff person; or
- (3) the appropriate licensing authority.

Chapter 9. Rules

Sec. 1. The division may adopt rules under IC 4-22-2, including emergency rules under IC 4-22-2-37.1, to implement this article.

SECTION 10. IC 12-24-3-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 2. (a) To provide greater security for patients, visitors, and employees, the division may not employ in a state institution an individual who has been convicted of any of the following offenses:

- (1) Rape (IC 35-42-4-1).
- (2) Criminal deviate conduct (IC 35-42-4-2).
- (3) Child molesting (IC 35-42-4-3).
- (4) Child exploitation (IC 35-42-4-4).

(b) In addition to the requirements of subsection (a), beginning September 1, 2001, the division may not employ in a state institution an individual who has been convicted of any of the following offenses:

- (1) A sex crime (IC 35-42-4) other than a crime listed in subsection (a).
- (2) Exploitation of an endangered adult (IC 35-46-1-12).
- (3) Failure to report battery, neglect, or exploitation of an endangered adult (IC 35-46-1-13).
- (4) Theft (IC 35-43-4) within the previous ten (10) years.
- (5) Murder (IC 35-42-1-1).
- (6) Voluntary manslaughter (IC 35-42-1-3).
- (7) Involuntary manslaughter (IC 35-42-1-4) within the previous five (5) years.
- (8) Felony battery (IC 35-42-2) within the previous five (5) years.
- (9) A felony offense relating to controlled substances (IC 35-48-4) within the previous five (5) years.

(c) Notwithstanding subsection (b), the division may continue to employ an individual who was:

- (1) hired before September 1, 2001; and
- (2) convicted of an offense listed in subsection (b) before September 1, 2001;



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1 if the division determines that the individual does not present a
 2 threat to the safety of patients, visitors, or employees of the
 3 institution.

4 (d) This section does not limit the authority of the division to:

5 (1) deny employment to; or

6 (2) terminate the employment of;

7 an individual.

8 SECTION 11. IC 12-24-3.5 IS ADDED TO THE INDIANA CODE
 9 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
 10 JULY 1, 2001]:

11 **Chapter 3.5. Direct Care Staff Persons and Other Unlicensed**
 12 **Employees**

13 **Sec. 1. This chapter applies after August 31, 2001.**

14 **Sec. 2. (a) A state institution may not knowingly employ an**
 15 **individual as a direct care staff person or other unlicensed**
 16 **employee if employment of the individual is prohibited under**
 17 **IC 12-24-3-2.**

18 **(b) In addition to the requirement of subsection (a), a state**
 19 **institution may not employ an individual as a direct care staff**
 20 **person if one (1) or more of the following conditions exist:**

21 **(1) A finding that the individual has:**

22 **(A) abused, neglected, or mistreated a consumer; or**

23 **(B) misappropriated a consumer's property;**

24 **has been entered into the registry of direct care staff.**

25 **(2) A finding that the individual has:**

26 **(A) abused, neglected, or mistreated a patient; or**

27 **(B) misappropriated a patient's property;**

28 **has been entered into the registry of nurse aides.**

29 **Sec. 3. If the registry of direct care staff does not contain any**
 30 **information for an individual who has applied for employment as**
 31 **a direct care staff person with a state institution, the director shall**
 32 **transmit the information required under IC 16-32-4-6 to the**
 33 **registry of direct care staff within three (3) business days after**
 34 **receipt of notice that there is no information regarding the**
 35 **individual in the registry of direct care staff.**

36 **Sec. 4. If the superintendent has knowledge of a conviction of an**
 37 **employee of a state institution that would indicate unfitness for**
 38 **service as a direct care staff person, other unlicensed employee, or**
 39 **other health care professional (as defined in IC 16-27-2-1), the**
 40 **superintendent shall report the information to the registry of direct**
 41 **care staff or the appropriate licensing authority.**

42 **Sec. 5. The division may not require an individual who applies**

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for employment as a direct care staff person or an other unlicensed employee to pay the cost of fees under IC 5-2-5-7 and other fees required to process a registry of direct care staff report, a registry of nurse aides report, or a limited criminal history under this chapter.

Sec. 6. (a) This section applies to an individual who is:

- (1) employed by a state institution as a direct care staff person; and
- (2) a regular employee (as defined in IC 4-15-2-3.7).

(b) If an individual described in subsection (a) is discharged from employment for abuse, neglect, or mistreatment of a consumer or misappropriation of a consumer's property and either:

- (1) the individual fails to file or continue to pursue a complaint or grievance under a formal complaint or grievance process recognized by the state; or
- (2) the discharge of the individual has not been overturned under a formal complaint or grievance process recognized by the state;

the division shall notify the registry of direct care staff of the finding of abuse, neglect, mistreatment, or misappropriation of property.

(c) An individual described in subsection (a) who is covered by a labor agreement continues to be:

- (1) covered by the labor agreement; and
- (2) subject to the terms and conditions of that agreement or any successor agreement.

SECTION 12. IC 16-18-2-50.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 50.5. "Case manager", for purposes of IC 16-32-4, has the meaning set forth in IC 16-32-4-1.

SECTION 13. IC 16-18-2-64.6 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 64.6. "Community based residential, habilitation, or vocational services provider", for purposes of IC 16-32-4, has the meaning set forth in IC 16-32-4-2.

SECTION 14. IC 16-18-2-94.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 94.5. (a) "Direct care staff person", for purposes of IC 16-28-13, has the meaning set forth in IC 16-28-13-0.3.

(b) "Direct care staff person", for purposes of IC 16-32-4, has

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1 the meaning set forth in IC 16-32-4-3.

2 SECTION 15. IC 16-18-2-172.5 IS ADDED TO THE INDIANA
3 CODE AS A NEW SECTION TO READ AS FOLLOWS
4 [EFFECTIVE JULY 1, 2001]: **Sec. 172.5. "Home care services
5 provider", for purposes of IC 16-32-4, has the meaning set forth in
6 IC 16-32-4-4.**

7 SECTION 16. IC 16-18-2-314.5 IS ADDED TO THE INDIANA
8 CODE AS A NEW SECTION TO READ AS FOLLOWS
9 [EFFECTIVE JULY 1, 2001]: **Sec. 314.5. "Registry of direct care
10 staff", for purposes of IC 16-28-13, has the meaning set forth in
11 IC 16-28-13-0.7.**

12 SECTION 17. IC 16-28-13-0.3 IS ADDED TO THE INDIANA
13 CODE AS A NEW SECTION TO READ AS FOLLOWS
14 [EFFECTIVE JULY 1, 2001]: **Sec. 0.3. (a) As used in this chapter,
15 "direct care staff person" means an individual who provides direct
16 assistance with daily living and personal adjustment activities to a
17 consumer receiving services from an ICF/MR serving more than
18 eight (8) individuals.**

19 **(b) The term does not include the following:**

- 20 **(1) A person who holds a license (as defined in IC 25-1-9-3)**
- 21 **issued by a board (as defined in IC 25-1-9-1).**
- 22 **(2) A nurse aide (as defined in IC 16-28-13-1).**
- 23 **(3) A volunteer who provides direct care services without**
- 24 **compensation.**
- 25 **(4) A member of the consumer's immediate family.**

26 SECTION 18. IC 16-28-13-0.7 IS ADDED TO THE INDIANA
27 CODE AS A NEW SECTION TO READ AS FOLLOWS
28 [EFFECTIVE JULY 1, 2001]: **Sec. 0.7. As used in this chapter,
29 "registry of direct care staff" refers to the registry of direct care
30 staff persons and case managers maintained by the state
31 department under IC 16-32-4.**

32 SECTION 19. IC 16-28-13-4, AS AMENDED BY P.L.108-1999,
33 SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
34 JULY 1, 2001]: **Sec. 4. (a) ~~Except as provided in subsection (b);~~ This
35 section applies to a person who:**

- 36 **(1) operates or administers a health care facility; or**
- 37 **(2) operates an entity in the business of contracting to provide**
- 38 **direct care staff persons, nurse aides, or other unlicensed**
- 39 **employees for a health care facility.**

40 **(b) Except as provided in subsection (c), a person described in**
41 **subsection (a) shall:**

- 42 **(1) apply within three (3) business days from the date a person is**

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employed as a **direct care staff person**, nurse aide, or other unlicensed employee for a copy of the person's **state nurse aide registry report from the state department** and a limited criminal history from the Indiana central repository for criminal history information under IC 5-2-5 or another source allowed by law; **and (2) obtain, before hiring a person as a direct care staff person, nurse aide, or other unlicensed employee, the person's state nurse aide registry report and registry of direct care staff report.**

~~(b)~~ (c) A health care facility is not required to apply for the state nurse aide registry report, **registry of direct care staff report**, and limited criminal history required by subsection ~~(a)~~ (b) if the health care facility contracts to use the services of a **direct care staff person**, nurse aide, or other unlicensed employee who is employed by an entity in the business of contracting to provide **direct care staff persons**, nurse aides, or other unlicensed employees to health care facilities.

SECTION 20. IC 16-28-13-5, AS AMENDED BY P.L.108-1999, SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 5. A person who:

- (1) operates or administers a health care facility; or
- (2) operates an entity in the business of contracting to provide **direct care staff persons**, nurse aides, or other unlicensed employees for a health care facility;

may not employ a person as a **direct care staff person**, nurse aide, or other unlicensed employee after receipt of the person's state nurse aide registry report **or registry of direct care staff report** if that person's report indicates that the person committed an offense under section (3)(a)(2) of this chapter and has been placed on the state nurse aide registry **or registry of direct care staff**, or after receipt of the limited criminal history if that person's limited criminal history indicates that the person has been convicted of any of the offenses described in section 3(a)(1) of this chapter.

SECTION 21. IC 16-28-13-6, AS AMENDED BY P.L.108-1999, SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 6. (a) A person who:

- (1) operates or administers a health care facility; or
- (2) operates an entity in the business of contracting to provide **direct care staff persons**, nurse aides, or other unlicensed employees for a health care facility;

is responsible for the payment of fees under IC 5-2-5-7 and other fees required to process a state nurse aide registry report, **registry of direct care staff report**, and a limited criminal history under section 4 of this

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chapter.

(b) A health care facility or an entity in the business of contracting to provide **direct care staff persons**, nurse aides, or other unlicensed employees for a health care facility may require a person who applies to the health care facility or entity for employment as a **direct care staff person**, nurse aide, or other unlicensed employee:

(1) to pay the cost of fees described in subsection (a) to the health care facility or entity at the time the person submits an application for employment; or

(2) to reimburse the health care facility or entity for the cost of fees described in subsection (a).

SECTION 22. IC 16-28-13-13, AS ADDED BY P.L.108-1999, SECTION 14, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 13. (a) The state department may adopt rules under IC 4-22-2 to implement this chapter.

(b) Rules adopted under this section must allow a person who:

(1) operates or administers a health care facility; or

(2) operates an entity in the business of contracting to provide direct care staff persons, nurse aides, or other unlicensed employees for a health care facility;

to obtain an individual's registry of nurse aide report by telephone or through use of the Internet.

SECTION 23. IC 16-32-4 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]:

Chapter 4. Registry of Direct Care Staff Persons

Sec. 1. As used in this chapter, "case manager" means an individual who provides ongoing case management to an individual:

(1) with developmental disabilities; or

(2) who is at least sixty-five (65) years of age;

who receives services under a Medicaid home and community based waiver approved under 42 U.S.C. 1396n or the community and home options to institutional care for the elderly and disabled program under IC 12-10-10.

Sec. 2. As used in this chapter, "community based residential, habilitation, or vocational services provider" means an entity approved by the bureau of developmental disabilities services under IC 12-11-1.1-1(e).

Sec. 3. (a) As used in this chapter, "direct care staff person" means an individual who provides direct assistance with daily living and personal adjustment activities to a consumer receiving

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1 services from any of the following entities:

- 2 (1) A community based residential, habilitation, or vocational
- 3 services provider.
- 4 (2) A home care services provider.
- 5 (3) An ICF/MR serving more than eight (8) individuals.
- 6 (4) A state institution (as defined in IC 12-7-2-184).

7 (b) The term does not include the following:

- 8 (1) A person who holds a license (as defined in IC 25-1-9-3)
- 9 issued by a board (as defined in IC 25-1-9-1).
- 10 (2) A nurse aide (as defined in IC 16-28-13-1).
- 11 (3) A volunteer who provides direct care services without
- 12 compensation.
- 13 (4) A member of the consumer's immediate family.

14 Sec. 4. As used in this chapter, "home care services provider"
15 means an individual or entity providing any of the following
16 services to an individual who is at least sixty-five (65) years of age
17 and who receives services under a Medicaid home and community
18 based waiver approved under 42 U.S.C. 1396n or the community
19 and home options to institutional care for the elderly program
20 under IC 12-10-10:

- 21 (1) Homemaker services and attendant care, including
- 22 personal care services.
- 23 (2) Respite care services.

24 Sec. 5. Not later than July 1, 2001, the state department shall
25 establish and maintain a registry of direct care staff persons and
26 case managers.

27 Sec. 6. (a) The registry required under this chapter must contain
28 at least the following information regarding each direct care staff
29 person and case manager:

- 30 (1) The individual's name.
- 31 (2) Information necessary to identify the individual, as
- 32 determined by the state department.
- 33 (3) The date the individual was first placed on the registry.
- 34 (4) If a finding has been made that the individual has abused,
- 35 neglected, or mistreated a consumer or misappropriated a
- 36 consumer's property, the following information:
- 37 (A) Documentation of the investigation, including the
- 38 nature of the allegation and the evidence that led to the
- 39 conclusion that the allegation was valid.
- 40 (B) The date of any hearing, if the individual chose to have
- 41 one, and its outcome.
- 42 (C) A statement by the individual disputing the allegation

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1 if the individual chooses to make a statement.

2 (b) The state department shall enter the information required
3 under subsection (a) within ten (10) working days after receipt of
4 the information.

5 Sec. 7. (a) Except as provided in subsection (b), the state
6 department shall permanently maintain the information in the
7 registry regarding an individual.

8 (b) The state department shall remove information regarding an
9 individual entered into the registry under section 6(a)(4) of this
10 chapter if:

11 (1) the division of disability, aging, and rehabilitative services
12 notifies the state department that the finding was made in
13 error;

14 (2) the individual was found not guilty in a court of law; or

15 (3) the state department is notified of the individual's death.

16 Sec. 8. If the division of disability, aging, and rehabilitative
17 services notifies the state department that the requirements of
18 IC 12-9-5-5 or IC 12-24-3.5-6 have been met to place a finding of
19 abuse, neglect, or mistreatment of a consumer or misappropriation
20 of a consumer's property by an individual on the registry of direct
21 care staff, the state department shall place the information
22 required under section 6(a)(4) of this chapter on the registry of
23 direct care staff.

24 Sec. 9. The state department must disclose information under
25 section 6(a)(4) of this chapter upon request and may disclose
26 additional information the state department determines necessary.

27 Sec. 10. The state department shall promptly provide an
28 individual with:

29 (1) all information contained in the registry regarding the
30 individual:

31 (A) upon request by the individual; and

32 (B) whenever a finding adverse to the individual is placed
33 on the registry; and

34 (2) sufficient opportunity to correct any misstatements or
35 inaccuracies contained in the registry regarding the
36 individual.

37 Sec. 11. If an entity applies to the state department for a copy of
38 an individual's registry of nurse aides report and registry of direct
39 care staff report, the state department shall provide a copy of both
40 reports to the entity at the same time.

41 Sec. 12. If the registry established under this chapter does not
42 contain any information regarding an individual for whom an

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entity requests a report, the state department shall notify the entity of that fact.

Sec. 13. (a) The state department may adopt rules under IC 4-22-2, including emergency rules under IC 4-22-2-37.1, to implement this chapter.

(b) Rules adopted under this section must allow for an entity described in section 2 or 4 of this chapter to obtain an individual's registry of direct care staff report by telephone or through use of the Internet.

SECTION 24. [EFFECTIVE JULY 1, 2001] (a) This SECTION applies to the following entities:

(1) A community based residential, habilitation, or vocational services provider (as defined in IC 12-7-2-37.5, as added by this act).

(2) A home care services provider (as defined in IC 12-7-2-105.3, as added by this act).

(3) An ICF/MR (as defined in IC 16-18-2-185) serving more than eight (8) individuals.

(4) A state institution (as defined in IC 12-7-2-184).

(5) An entity that employs individuals as case managers.

(6) An entity responsible for certifying individuals as case managers.

(7) An entity in the business of contracting to provide case managers or direct care staff persons for an entity described in subdivisions (1) through (6).

(b) As used in this SECTION, "case manager" has the meaning set forth in IC 12-7-2-25.5, as added by this act.

(c) As used in this SECTION, "direct care staff person" has the meaning set forth in IC 12-7-2-63.5, as added by this act.

(d) As used in this SECTION, "division" refers to the division of disability, aging, and rehabilitative services established by IC 12-9-1-1.

(e) As used in this SECTION, "registry of direct care staff" refers to the registry of direct care staff persons and case managers maintained by the state department of health under IC 16-32-4, as added by this act.

(f) Not later than August 31, 2001, an entity described in subsection (a) shall transmit to the registry of direct care staff the information required under IC 16-32-4-6, as added by this act, regarding each:

(1) case manager who is certified or employed by the entity; and



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1 (2) direct care staff person employed by the entity.

2 (g) If an entity described in subsection (a)(7) places an
3 individual as a case manager or direct care staff person in an entity
4 described in subsection (a)(1) through (a)(6), the entity described
5 in subsection (a)(1) through (a)(6) is not required to transmit the
6 information required by subsection (f).

7 (h) The division of disability, aging, and rehabilitative services
8 may assess a civil penalty against a person who:

9 (1) operates an entity described in subsection (a); and

10 (2) knowingly or intentionally violates subsection (f).

11 The amount of the penalty assessed under this subsection may not
12 exceed the amount of the fine that may be assessed against a health
13 facility by the state department of health under IC 16-28-5-4(a)(2)
14 for a deficiency.

15 (i) Civil penalties collected under subsection (h) shall be:

16 (1) deposited by the division in the developmentally disabled
17 client services account; and

18 (2) used to implement IC 12-11.5, as added by this act, and
19 other quality assurance programs approved by the division.

20 (j) This SECTION expires September 30, 2001.

21 SECTION 25. [EFFECTIVE UPON PASSAGE] In establishing
22 and maintaining the registry of direct care staff persons and case
23 managers required by IC 16-32-4, as added by this act, the state
24 department of health shall, to the extent possible, use the
25 technology of the registry of nurse aides required under 42 CFR
26 483.156.

27 SECTION 26. An emergency is declared for this act.

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